

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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OMNIPOINT COMMUNICATIONS INC.,
d/b/a T-MOBILE, AND
OMNIPOINT NY MTA LICENSE, LLC

Plaintiffs,
- against-

RULE 56.1
STATEMENT OF FACTS

08 CV. 2201 (WCC) (GAY)
(ECF CASE)

TOWN OF LAGRANGE,
TOWN OF LAGRANGE ZONING BOARD OF APPEALS,
TOWN OF LAGRANGE PLANNING BOARD, AND
TOWN OF LAGRANGE PLANNING, ZONING AND
BUILDING DEPARTMENT

Defendants.

The Defendants, Town of LaGrange, Town of LaGrange Zoning Board of Appeals, Town of LaGrange Planning Board and Town of LaGrange Planning, Zoning and Building Department, set forth the following as facts over which there is no genuine disputes sufficient to defeat a motion for summary judgment.

1. On December 20, 2003, the Plaintiff Omnipoint Communications Inc. d/b/a T-Mobile (hereinafter "T-Mobile") filed an application with the Town of LaGrange for site plan and special use permit approval for the construction of a 190 foot monopole tower to be constructed on lands owned by Frank Redl at Sedgwick Road (hereinafter the "Redl Application") (Record at 015-075)¹

2. On January 22, 2004 the Honorable Charles L. Brieant signed an order in the matter of "Nextel of New York, Inc. and OmniAmerica Towers Inc. v. The Town of LaGrange, et. al" (Case Number 02 Civ. 4260). (R.076-079)

¹ All future references to the Record will appear as (R.__).

3. The Order referenced in Paragraph 2, above, was entered in the Clerk's office of the Southern District of New York on January 23, 2004. (R.076-079)

4. The Redl Application was presented by T-Mobile at the April 20, 2004 workshop meeting of the Planning Board. (R.084-096)

5. After April 20, 2004, T-Mobile elected to place the Redl Application on hold. (R.166, 330).

6. On April 20, 2004, T-Mobile's counsel was informed by the Town Attorney of the January 2004 Order.

7. On May 20, 2005, T-Mobile submitted a new application to co-locate nine (9) antennas on a tower owned by American Tower Corporation ("ATC") at 20 Vervalen Drive in the Town of LaGrange (the "Vervalen Application"). (R. 167-233).

8. T-Mobile appeared before the workshop meeting of the Town of LaGrange Planning Board on July 5, 2005 to present its application for co-location on Vervalen Drive. (R.241)

9. By letter dated November 18, 2005, T-Mobile submitted to the Town an escrow deposit of \$2,500 to cover consultant review of the Vervalen Application. (R.252-253).

10. By letter dated December 14, 2005, the Town Engineer, Chazen Engineering and Land Surveying issued a comment letter regarding the substance of the Vervalen Application (R.256-259).

11. On December 20, 2005, the Planning Board scheduled a public hearing on the Vervalen Application for January 17, 2006. (R.260-263)

12. On January 17, 2006, the Planning Board opened the public hearing on the Vervalen Application. (R.330-333).

13. During the meeting, questions were raised by residents regarding ATC compliance with the January 2004 Court Order.

14. On January 17, 2006, Mr. Davis, T-Mobile's counsel stated, in sum and substance that: "[F]rom T-Mobile's perspective [I] would prefer not to come back to the board for the public hearing until the issues [are] addressed with American Tower." (R.333).

15. On January 17, 2006, the Planning Board adjourned the public hearing on the Vervalen Application. (R.333)

16. By letter dated April 3, 2006, Joachim G. Ansorge, Director of Planning, Zoning and Building, notified T-Mobile's counsel that Vervalen Application would require an area variance from the Town of LaGrange Zoning Board of Appeals ("ZBA") (R.358-360)

17. T-Mobile did not respond to the April 3, 2006 letter, referenced in Paragraph 15, above, until January 4, 2008 (R. 516).

18. On April 4, 2006, ATC received a building permit to remove the pre-existing Nextel equipment shelter and to relocate the existing utilities. (R.356-357, 361-362).

19. On August 2, 2007, ATC received a Certificate of Compliance. (R.374)

20. On August 3, 2007, Nextel received a Use Permit. (R.375)

21. By letter dated August 7, 2007, T-Mobile requested to renew its application and to be placed on the September 4, 2007 Planning Board workshop agenda. (R.377)

22. On September 4, 2007, T-Mobile appeared before the Planning Board during the workshop meeting. (R.378)

23. T-Mobile submitted an application the Town of LaGrange Zoning Board of Appeals for an area variance by letter dated September 25, 2007. (R.378-451)

24. On November 5, 2007, the ZBA opened the public hearing on T-Mobile's application for an area variance. (r.465-475)

25. On December 3, 2007, the ZBA adjourned the public hearing on T-Mobile's application for an area variance. (R.484-487)

26. On December 18, 2007, the Planning Board voted to schedule a public hearing on the Vervalen Application. (R.487-496)

27. On January 22, 2008, the Planning Board issued a Negative Declaration under the State Environmental Quality Review Act. (R.525-535, 539-543)

28. On February 4, 2008, the ZBA denied T-Mobile's application for an area variance. (R.552-560, 563)

29. On February 26, 2008, the Planning Board adopted a corrected Negative Declaration under SEQRA. (R.589, 591-595)

30. T-Mobile did not request an interpretation of Town Code §240-49(G)(5)(b) from the Building Inspector. (R.520-523).

Dated: July 25, 2008
Poughkeepsie, NY 12601

RESPECTFULLY SUBMITTED,
Van DeWater & Van DeWater, LLP

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